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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-second session

SUMMARY RECORD OF THE 15th MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 4 May 2000, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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GE.00-41852 (E)

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

1. The CHAIRPERSON recalled that the Governments of Jordan and Portugal had requested postponement of the examination of their reports. She gave the floor to the Secretary of the Committee to explain the rescheduling of examination of the reports of Jordan and Portugal.

2. Mr. TIKHONOV (Secretary of the Committee) said he had already apprised the Permanent Representative of Portugal of the Committee's decision to accede to his request to consider his country's third periodic report at the Committee's November 2000 session. However, he wished to draw Committee members' attention to the fact that requests for postponements in the past had been accepted on condition that the reports would be considered at the following session. In the case of Jordan, the Permanent Representative had requested that his country's report should be considered at the extraordinary session to be held in August 2000. The Committee's agreement would mean that it would be considering at its next session five reports originally scheduled for consideration at the November 2000 session plus one scheduled for the April-May session. If the Jordanian report was examined at the Committee's extraordinary session, it would both facilitate its work and accede to the Permanent Representative's request.

3. The CHAIRPERSON confirmed that Jordan would appear before the Committee at its extraordinary session in August 2000 and that the Portuguese report would be considered at the November session. The reports of the following seven States would be considered at the extraordinary session in August: Australia, Belgium, Honduras, Jordan, Mongolia, Sudan and Turkestan.

4. Mr. TEXIER said he had been under the impression that Venezuela had been scheduled for the August session.

5. Mr. TIKHONOV (Secretary of the Committee) said that consideration of the Venezuelan report had originally been scheduled for the April 2001 session, so that replacing Venezuela with Jordan at the extraordinary session meant that Venezuela would revert to its originally scheduled date of April 2001, with the further advantage of giving the State additional preparation time following the recent reform of the Constitution.

6. Mr. GRISSA asked whether confirmation had been received from the countries due to appear before the Committee at the extraordinary session. Had Sudan given confirmation?

7. Mr. TIKHONOV (Secretary of the Committee) reminded members that the principle followed was to schedule consideration of reports in the order in which they had been received. However, it was impossible to schedule for a particular session all 26 reports in the secretariat's

possession. Previous practice, therefore, had been to schedule only at the end of each session consideration of reports for the succeeding session, at which stage the secretariat informed the countries concerned by formal note verbale. He had already informally advised all the States currently on the list that, since the Economic and Social Council had authorized the Committee to hold an extraordinary session, their reports would be considered at that session and not at the November session. Sudan had informally indicated that it would attend.

8. The CHAIRPERSON requested Committee members to pass to the Secretary any contributions they might wish to make to the draft note verbale to be dispatched to the Permanent Missions of Jordan and Portugal informing them that their reports would be examined in August and November respectively. That note would serve as a formula letter for subsequent cases.

9. Mr. TIKHONOV (Secretary of the Committee) suggested that in the cases of Jordan and Portugal a letter from the Chairperson would suffice. However, contributions for the note verbale for other countries would be most welcome. A final version would be circulated for members' approval, following which it would become the standard text for informing States of the scheduling for consideration of their reports to the Committee.

10. It was so decided.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft general comment on article 12 (Right to health)

11. Mr. RIEDEL informed the Committee that the draft before it would be replaced by a consolidated version incorporating the remainder of the valuable comments he had received from members. He had retained the old paragraphs as far as possible. Any that had been shifted had been placed in square brackets and any actual changes were preceded by an italicized explanatory line.

12. The drafting committee had met several times and had brought the text more into line with the General Comment on article 11. Paragraph 11 was the key paragraph concerning the normative content of article 12. For easier reference, it had been suggested that the succeeding subparagraphs should be given actual headings rather than a mere numerical reference to the article's subparagraphs. Since the change had not yet been endorsed by the drafting committee, he would welcome members' comments.

13. Under the general heading Article 12. Special topics of broad application, the text referring to adolescents had remained unchanged but given a separate paragraph number (29 bis). The text on older persons had been changed slightly to conform to previous general comments and to incorporate Mrs. Jiménez Butragueño's contribution. Persons with disabilities had been assigned a separate paragraph to avoid the inference that older persons were ipso facto disabled.

14. Referring to paragraph 29 (c), he said he had been greatly assisted in the drafting by Mr. Julian Burger of the Office of the High Commissioner for Human Rights. He invited members to comment on the reference in line 1 to existing international law on the topic. The footnotes, not yet added, would refer to several conventions on indigenous and tribal peoples, biological diversity, etc.

15. Mr. GRISSA considered that the term "indigenous" excluded other migrants.

16. The CHAIRPERSON pointed out that paragraph 29 (c) was intended to deal exclusively with indigenous people. She wondered, however, whether the phrase "indigenous peoples living in their countries" was too limiting.

17. Mr. AHMED suggested that the reference was meant to be to indigenous people living on their ancestral lands.

18. Mr. RIEDEL said that the text, as it stood, emphasized the fact that all countries in the world experienced problems relating to indigenous people, but not all countries had minority groups threatened with extinction. For that reason, the problems of indigenous people were being separated from the general problems of minority groups. The idea was to impress upon States parties with indigenous people living on their territories the need to discharge their responsibilities to those people, while all State parties were expected to fulfil their international obligations in that regard.

19. Mr. WIMER ZAMBRANO said the topic of indigenous people was very important in many Latin American countries, so that it was important for the Committee to employ the terminology most widely used by other United Nations bodies, some of which used the term "aboriginal".

20. Mr. ANTANOVICH said paragraph 29 (c) was extremely important and raised the level of the general comment as a whole. He suggested that the topic would be made more specific by replacing "and" by "of" in the title. He also considered it unnecessary to spell out in line 1 of the paragraph the legal basis for interest in the issue of indigenous people, since it had already been stated in paragraph 2 with the reference to the Universal Declaration of Human Rights. He suggested that the paragraph should begin at the second sentence, adding the word "additional" after "specific", thereby justifying the entire procedure and making it easily understood by any country with an indigenous population.

21. The CHAIRPERSON suggested that a compromise solution might be to reverse the order so that the title would read: "Indigenous people and the right to health".

22. Mr. GRISSA sought an exact definition of the term "indigenous people". For instance, were the Tamils who had emigrated from India to Ceylon considered indigenous? He agreed with Mr. Wimer that the general comment should adhere to normal United Nations usage so as to avoid any confusion.

23. Mr. HUNT agreed. He trusted that the Committee was in safe hands with Mr. Burger - who had presumably drafted the paragraph and had, after all, worked for years on that issue in the United Nations system. However, he would suggest that Mr. Riedel should verify the matter with him once more.

24. The CHAIRPERSON suggested that Mr. Burger might also be consulted again concerning the phrase "indigenous people living in their countries". In her view, "living" implied that they might not necessarily be indigenous to the area in which they lived.

25. Mr. TEXIER said he was sure the drafters of the paragraph could be trusted. The term "indigenous people" had been in general use for many years. He suggested deleting the phrase "living in their countries" which added nothing in his view. He stressed the importance of the paragraph, which dealt not only with a sizeable population, but also touched on highly sensitive issues affecting the Amazon and other regions, where conflict had erupted between the State and indigenous people who used traditional medicines. It was commendable that the general comment would provide those working in the field with an interesting weapon to encourage the continued use of such medicines. He warmly congratulated Mr. Riedel on what he described as a comprehensive and complete paragraph 29 (c).

26. Mr. MARCHAN ROMERO said that he felt some misgivings about the heading to part V of the draft general comment. He believed that, strictly speaking, only States parties to the Covenant had obligations. It would perhaps be better to use the word "responsibilities" for actors other than States parties.

27. Mr. RIEDEL said that he would study the suggestion carefully, although the drafting committee had already taken the matter into account. He felt that it was important that the Committee should consider carefully the draft comment's underlying structure. The text began with the normative content of article 12, followed by States parties' obligations, which the drafting committee had thought should come next as they did in General Comment No. 13. The new paragraph 19 of Part II was a novel departure in that it consisted of a full definition of the core obligations of States under article 12. It had been felt that it would be wrong to follow that with an account of international obligations, so the next heading, that to part III, was "Violations". Part IV was headed "Implementation at the National Level" and part V was headed "Obligations of Actors other than States Parties". He felt quite strongly about the issue of the structure, which had been decided after long discussion during the previous session.

28. He did not agree with Mr. Wimer Zambrano and Mr. Antanovich that indigenous peoples were covered by the term "everyone" used in article 2 of the Universal Declaration. It was not until the 1980s that concern about their rights had gained momentum. While he doubted that the Tamil minority in Sri Lanka, mentioned by Mr. Grissa, would be covered by the term "indigenous people", he would consult the United Nations expert, Mr. Julian Burger, on whose advice he had relied in drafting the paragraph. He would also give further consideration to the phrase "living in their countries". He assured Mr. Texier that the references in the draft comment to traditional medicine would be retained. Mr. Sadi's formulation concerning the problem of leaded gasoline had been integrated into the obligation to protect the right to health

29. Mr. GRISSA said that the term "indigenous people" meant the people originally living in a country who later became a minority in that country's population. The Tamils were an imported minority. The aboriginals of Australia, for example, were an indigenous people.

30. Mrs. JIMÉNEZ BUTRAGUEÑO said that she was very gratified by the way her ideas were taken into account and reflected in the new paragraph.

31. Mr. HUNT said, in response to the point made by Mr. Texier, that the paragraph on limitations was in an equivalent position to the similar paragraph in General Comment No. 13.

MISCELLANEOUS MATTERS (agenda item 9) (continued)

Methods of work

32. Mr. CEAUSU said that in scheduling its consideration of the reports of States parties, the Committee usually applied the principle of equal treatment. Normally, three meetings were devoted to each report. Experience showed, however, that that could result in a waste of time. Some initial reports were very detailed, demanding close analysis. Periodic reports, on the other hand, should generally speaking include only information on new developments in the State party. Sometimes, even initial reports presented no major problem and demanded only routine consideration. Occasionally, replies to the issues raised were already in the written report. He felt that the Committee should perhaps rethink its method of organizing its work in order to be able to spend more time on issues that really needed to be emphasized.

33. Perhaps at its next session, the Committee could depart from the usual three meetings per report, for example, by allocating only one to the second periodic report of Belgium, which was unlikely to present any particular problem. Delegations might of course complain that they were not receiving equal treatment. Nevertheless, he believed that the Committee should avoid wasting time. If a reasonable solution could be found, it would be able to press on with its backlog of reports.

34. The CHAIRPERSON said that it had been suggested in the past that only two meetings should be held on periodic reports. However, even for periodic reports, the lists of issues could contain as many as 75 questions. She believed that the lists of issues for both initial and periodic reports needed to be more sharply focused.

35. Mr. WIMER ZAMBRANO said that article 15 of the Covenant was often left out of the discussion of a report because of lack of time. Articles 13, 14 and 15 should be treated as a cluster.

36. Mrs. JIMÉNEZ BUTRAGUEÑO felt that there were shortcomings in the revised guidelines for reports (E/C.12/1991/1). For instance, article 3 of the Covenant was omitted altogether and article 13 was not given proper importance. Above all, however, the Committee needed to be flexible. Sometimes, social systems underwent radical changes and a State party's periodic report might demand even closer consideration than an initial report. The system whereby Committee members divided the articles of the Covenant among themselves and specialized to some extent in the topics covered had, she believed, worked well.

37. Mr. TEXIER said that in considering States parties' reports the Committee tended rather to skate over article 15. He felt that was largely because it was not altogether comfortable with the article and not quite sure what questions to ask. The Committee needed to define the article's content for itself. What was the core content of article 15? What constituted a minimum of cultural rights? He was well aware of the difficulties of agreeing on a definition but he felt that some members of the Committee were well qualified to do the initial research. He recalled that the Committee had experimented with the appointment of a small group to be responsible for singling out major issues in regard to reports and those on which less time needed to be spent. Agreement had not always been reached but the system had not been without its advantages. Reinstituting such a system might make it easier to decide that two meetings were enough to consider a particular report.

38. The CHAIRPERSON said that the Committee could experiment with cutting the time for the consideration of periodic reports down to two meetings at its forthcoming extraordinary session in August. The Committee would have before it then three initial and four periodic reports. The list of issues for the third periodic report of Australia was to be approved at the current session. The working group should try to keep the list really brief and targeted so that only two meetings would be necessary.

39. She agreed that the Committee needed to be able to do better with article 15. She believed that it comprised three topics: first, the right to take part in cultural life, second, the right to own intellectual property, and third, the right to benefit from scientific progress. Sometimes, the latter right conflicted with the right to intellectual property. The Committee's approach needed to be refined accordingly. She and Mr. Marchan Romero could perhaps work together on the right to take part in cultural life. She reminded the Committee that Ms. Audrey Chapman was working with the World Intellectual Property Organization (WIPO) on the right to intellectual property. She had been thinking about a topic for a day of general discussion at the Committee's session in November. Mr. Texier had indicated that he would like a day of general discussion on his special subject at the spring session in 2001. The Committee could perhaps agree to schedule a day of discussion on the right to intellectual property during the November session.

40. Mr. TIKHONOV (Secretary of the Committee) said that he had discussed Ms. Chapman's preliminary draft with her. She had undertaken to revise it and to have a new draft ready by 1 September 2000. The new draft would then be circulated for comment, in cooperation with WIPO, and a final draft prepared by mid-October in the light of the comments received. That final draft could serve as a background paper to a day of general discussion, which would give the Committee members and outside experts an opportunity to discuss the very important topic of the right to intellectual property.

41. Mr. CEVILLE said that he endorsed the idea that work should be started on a draft general comment on article 15. The Committee had already succeeded in adopting a General Comment on the closely linked topic of education. The consideration of States parties' reports, entailed two aspects: first, the design of the questions asked, and second, the division of time. The design of questions had led almost inevitably to a kind of specialization among Committee members. While no actual limits were placed on members' questions, in practice each one had a particular focus. With regard to Mr. Ceausu's point about the division of the Committee's time,

he said that some reports might contain material that justified devoting three or more meetings to them. Any decision as to the time needed would depend on the list of issues, which in turn depended on the decision of the pre-sessional working groups. It should be left to the working group concerned, therefore, to set the timetable for forthcoming sessions.

42. Mr. CEAUSU said he thought that the most appropriate place to discuss the main areas of concern raised by each country report was the working group. When he had last been involved in such work, one member of the group had been allocated to look at the report and draw up a list of issues, while another had studied the list and acted as a sounding-board for further discussion. The list should include three categories of issues. The first category covered issues dealt with in the Committee's general guidelines that had not been addressed in the report. The second category consisted of areas in which the report presented information that was in conflict with the State party's obligations under the Covenant. The third category covered issues arising from reports made by other organizations in the United Nations system, such as the World Health Organization (WHO) and the International Labour Organization (ILO). It was not necessary to raise questions on every aspect of the report, the number of issues in the list should be restricted to 10 or 20. In that way, the State party would find it easier to provide written replies, which could then be translated more speedily into all the working languages.

43. Mr. GRISSA said that he did not agree with Mr. Ceausu's comments because, if the Committee concentrated only on the deficiencies of each report, it would be accused of not acknowledging its positive aspects. In his view, it was also important to give each country equal treatment by allocating each the same number of meetings. Moreover, the time spent on each country should not be limited in advance, since experience had shown that some countries faced such great problems that more time was needed to discuss them.

44. The CHAIRPERSON pointed out that the only difference in the number of meetings allocated to each country was that countries presenting an initial report should be allocated three meetings and countries presenting subsequent periodic reports should be allocated two meetings. She agreed that some countries faced so many problems that it would be desirable not to restrict the time allotted to them. However, discussions in such cases could go on forever if no time limit was set, and it was important to try to streamline the Committee's work so that States parties did not have to spend such a long time reporting to the Committee.

45. Mrs. JIMÉNEZ BUTRAGUEÑO said she agreed with Mr. Ceville's proposal to set up a group dealing with the issue of culture, coordinated by Mr. Wimer Zambrano. Regarding the Committee's methods of work, she said that both the list of issues and the information the Committee received from non-governmental organizations (NGOs) were very important. She therefore did not agree with Mr. Ceausu's view that the number of points raised in the list of issues should be restricted, since that could lead to the Committee being accused of neglecting important areas.

46. Mr. SADI said that he supported the idea of drawing up more general comments; however, he felt that, in areas where the Committee had not fully crystallized its ideas - such as culture - it might be premature to draft a general comment. On the question of the consideration

of reports by States parties, he thought that improvements could be made to the list of issues. It was often the case that the same questions were raised with regard to many different countries, which could give the impression that those questions were merely routine ones. It would be better to include precise references to the place where each issue was raised in the State party's report or in other material, such as reports received from NGOs. In addition, he did not believe that a timelimit should be imposed on the consideration of reports; if one particular country required more meetings, there should be a mechanism to allow for that. The Committee should avoid giving the impression that it was prepared to consider reports in a superficial manner.

47. Mr. WIMER ZAMBRANO, endorsing Mr. Ceausu's comments, said that the list of issues had become too long over the years and that the Committee should ensure that it made the best possible use of its time. A majority view appeared to be emerging that the principle of allocating three meetings for the consideration of initial reports and two meetings for periodic reports was a good one, since it meant that all countries were treated in the same way.

48. Mr. ANTANOVICH agreed that the Committee had to review its methods of work in order to improve its efficiency. However, no new position had yet emerged that was acceptable to all the members. Governments would continue to prepare reports on the basis of their own analysis and understanding of the issues involved, despite the Committee's attempts to push them towards more efficient reporting. It was therefore very important for the Committee to be able to ask States parties whatever questions it chose. The allocation of three meetings for discussion of initial reports and two meetings for periodic reports seemed to him to be fair. He also thought that the Committee should focus more on the extent to which its concluding observations were addressed in periodic reports. That would help it to ask delegations more precise questions.

49. Article 15 of the Covenant was difficult to address since it covered some complex issues; however, it had to be admitted that the Committee did not pay it sufficient attention and, for that reason, it would be a good idea to draft a general comment. He proposed that informal consultations be held on the subject once the draft general comment on the right to health had been finalized.

50. The CHAIRPERSON said that a general comment on culture would not be drafted until the Committee had drawn up a general comment on the right to work. However, it was possible to begin informal consultations in order to lay the groundwork for a general comment on culture.

51. Mr. CEAUSU said that some items on the list of issues obviously needed to be put in writing to allow the State party to prepare its replies adequately. However, other questions that had been included in previous lists of issues could have been asked orally because they were much more straightforward. It was also important to avoid formulating questions in such a way that they gave the impression that the Committee had prejudged a situation. For example, one question had asked which groups of migrant workers were victims of discrimination. That suggested that the Committee had assumed in advance that such discrimination existed.

52. The CHAIRPERSON said that further discussion of the Committee's procedure for considering State party reports was needed, but she hoped that a decision could be made on the subject before the end of the current session. She asked the members of the Committee whether

they supported the proposal to hold a day of general discussion on article 15.1 (c) of the Covenant at the next Committee session and to ask Audrey Chapman from WIPO to present a draft working paper on the subject, to be circulated by September.

53. Mr. TEXIER said that he would try to prepare a plan for discussion of a general comment on the right to work in time for the Committee's November 2000 session. He also suggested that the Committee's day of general discussion at its spring 2001 session could focus on the right to work, perhaps with the participation of representatives of ILO as well as of the NGOs that usually took part in the Committee's discussions.

54. Mr. HUNT wondered whether it would be useful for the day of general discussion in November to encompass the whole of article 15 of the Covenant, perhaps with specific time allocated to article 15.1 (c), so that the issue of intellectual property could be discussed in the broader context of the right to cultural life.

55. The CHAIRPERSON thanked Mr. Hunt for his suggestion, but pointed out that a day of general discussion on article 15 had already been held and that the issues might become muddled if the discussion in November was not more narrowly focused. She took it that the members of the Committee accepted the proposal to hold a day of general discussion in November on article 15.1 (c) of the Covenant.

56. It was so agreed.

The meeting rose at 5.10 p.m.